IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 313 OF 2002.

1. Smt. Miguelinha Gracias e Barreto (now deceased),
2. Miss Valeriana Barreto,
3. Smt. Artemisia Carmelina Barreto e Menezes,
4. Shri Don Jose Carlos Joaquim Maia D'Souza Menezes,
all represented by attorney Shri Alfred Sequeira s/o Juliana Sequeira, r/o Sheller, Canacona. ... Petitioners.

Versus

Shri Inacio Martinho Fernandes, s/o late Francisco Jacob Fernandes, Sheller, Canacona. ... Respondent.

Mr. M.B. D'Costa with Mr. J.A. Lobo, Advocates for the Petitioners.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. S. Karpe, Advocate for the Respondent.

Coram: P.V. HARDAS, J.

Date: 5th December 2002.

ORAL JUDGMENT.

Rule. Rule made returnable forthwith. By consent of parties, this petition is taken up for final hearing.

2. This petition has been filed by the petitioners, who are the plaintiffs in Regular Civil Suit No. 41/99 pending on the file of the Civil Judge, Junior Division, at Canacona. This petition assails the Order of the learned trial Court, dated 29th July 2002, in the aforesaid Civil Suit, rejecting the application

filed by the plaintiffs under Order VI, Rule 17 and Order I, Rule 10(2) of the Code of Civil Procedure, which is at Exhibit 18. The learned trial Court rejected the aforesaid application on the ground that the amendment application was nothing but an attempt to correct the initial mistakes and to fill up the lacunae which had crept up at the time of filing of the suit.

3. I have heard Mr. D'Costa, the learned counsel appearing for the petitioners and Mr. Coelho Pereira, learned senior counsel appearing for the respondent. I have also perused the aforesaid application. Mr. D'Costa, the learned counsel for the petitioners, has very fairly stated that he is not pressing for the proposed amendment, which is at "(XXX) on page no. 6, by deleting the contents of para no. 22 and by substituting the same as follows:". The proposed amendments are sought at the stage when the case was fixed for settlement of issues. The proposed amendments do not change the nature of the suit nor affect the pleadings in any manner. Most of the amendments relate to the correction of errors which had crept up at the time of filing of the suit. It appears that the amendments are not likely to cause any serious prejudice to the defendant in his defence and it is my considered opinion that the amendments are essential for the just decision of the case. My attention has been invited by

the learned counsel for the petitioners to the decision of the Supreme Court in **Sampath Kumar v. Ayyakannu and another,** (2002) 7 S.C.C. 559. The Hon'ble Apex Court has held that pre-trial amendment should normally be more liberally allowed than amendment sought after commencement of the trial.

4. According to me the amendments are necessary for the just decision of the case and, therefore, the amendment application deserves to be allowed. The Order impugned in the present petition is, hereby, quashed and set aside and the amendment application is allowed excepting the amendment for deleting paragraph 22 and substituting the same by amendment at "XXX".

5. The Writ Petition is, accordingly, allowed. Rule is made absolute in the above terms with no order as to costs.

(P.V. HARDAS)
JUDGE.

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